Supreme Court, U.S.
FILED
FEB 7 1994

NO._____

IN THE
Supreme Court of the United States
OCTOBER TERM 1993

GRAYDON L. GIBSON, OLETA GIBSON,
Petitioners,
v.
DALLAS COUNTY EDUCATION DISTRICT,
Respondent.

Petition For Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment to the United States Constitution provides any limitations on a state's retention of admittedly invalid, illegal taxes collected, under duress, by a legislative enactment that is unconstitutional under the State's Constitution.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record, pursuant to Supreme Court Rule 14(b), certifies that the following is a list of all persons known to me as having an interest in the outcome of this appeal.

1. Graydon L. Gibson (Petitioner)
   Oleta Gibson (Petitioner)

2. Dallas County Education District (Respondent)

3. Texas Education Agency (Intervenor)

4. Attorney General of Texas (Intervenor)

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IN THE

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GRAYDON L. GIBSON, OLETA GIBSON,
Petitioners,
v.
DALLAS COUNTY EDUCATION DISTRICT,
Respondent.

Petition For Writ Of Certiorari To The United States Court of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioners Graydon L. Gibson and Oleta Gibson respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this action on January 5, 1994.

OPINIONS BELOW

The opinion of the Court of Appeals (App., infra, 1a-3a) is unreported. The opinion of the district court (App., infra, 4a-9a) is unreported.

JURISDICTION

The Court of Appeals' Opinion in this matter was filed on January 5, 1994. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action involves the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, *U.S. CONST.*, Amdt. 14, §1. This action also involves the Tax Injunction Act, 28 U.S.C. § 1341.

STATEMENT OF THE CASE

The Texas Tax

The 72nd Texas State Legislature enacted a state public school finance system creating County Education Districts (CEDs) on August 26, 1991. (Acts 1991, 72nd Leg., K.S., Ch. 20, 1991, Tax. Gen. Laws 381, amended by Act of May 27, 1991, Tax. Gen. Laws 1475). Texas Ed. Code §20.941, *et seq.*

Five months later, on January 30, 1992, the Texas Supreme Court held that this Texas public school finance system, referred to above, levied a state ad valorem tax prohibited by and in violation of Article VIII, Section 1(e) of the Texas Constitution and was also unconstitutional because it permitted County Education Districts to levy ad valorem taxes without prior voter approval in violation of Article VII, Section 3 of the Texas Constitution, *Farmers Branch Independent School District v. Edgewood Independent School District*, 826 S.W.2d 489, 524 (Texas 1992) (Edgewood III). The Court's opinion stated that the Texas Constitutional defects made the entire scheme of the Texas public school

finance system invalid and held that the tax scheme did not merely violate a state statute, but was beyond the constitutional authority of the 72nd Legislature to enact. *Edgewood III*, 826 S.W.2d 514, 515.

The Texas Supreme Court, relying on the retroactivity analysis of *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971), also held that its ruling was only to be applied *prospectively* to the 1993 tax year and was not to be used to interfere with the collection of all 1991 and 1992 CED taxes, nor was not to be used as a defense to payment of such taxes. *Edgewood III*, 826 S.W.2d 518-522.

Petitioners Actions

Petitioners filed a class action complaint on November 18, 1992, in the United States District Court for the Northern District of Texas seeking to recover the 1991 CED ad valorem taxes assessed and collected from them. Petitioners alleged federal jurisdiction under 28 U.S.C. § 1331 as a civil action involving a federal question arising under the Constitution of the United States. Thereafter, on February 8, 1993, an amended class action complaint was filed to include the 1992 CED ad valorem taxes assessed and collected from them.

Petitioners' complaint specifically alleged that the taxing authority had no authority to tax and that the taxpayers had no "plain", "speedy" and "efficient" remedy under state law giving them a clear and certain remedy to obtain a refund of these illegal exactions and that this illegal taking of property, under duress, violated the Due Process Clause of the Fourteenth Amendment. The Texas Attorney General and the Texas Education Agency intervened in this proceeding.

On May 17, 1993, the district court below dismissed the amended complaint filed on the basis of *res judicata*. On January 5, 1994, the Court of Appeals for the Fifth Circuit affirmed the lower court's dismissal decision holding that this action is barred by the Tax Injunction Act, 28 U.S.C. § 1341.

REASONS FOR GRANTING THE WRIT

THIS COURT'S DECISIONS ON THE PROCEDURAL SAFEGUARDS OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT WERE IGNORED BY THE COURT OF APPEALS

This petition presents a federal constitutional issue concerning procedural due process rights of a taxpayer under a state legislative enactment that is unconstitutional under the State's Constitution. This Court is asked whether, in the absence of a state refund remedy, federal constitutional principles compel a state to return illegal taxes, collected under duress, which violate its state constitution.

This issue presents questions of substantial public importance concerning the limitations, if any, imposed by the Due Process Clause of the Fourteenth Amendment on the rights of states to retain invalid taxes, collected under duress, which were beyond the power of the state legislature to impose.

This Court has consistently held that when state taxes are collected in violation of federal law, there is a Fourteenth Amendment Due Process obligation to return the unlawful taxes. *Ward v. Love County*, 253 U.S. 17 (1920) (unlawful taxes collected by coercive means incurs obligation to repay); *Carpenter v. Shaw*, 280 U.S. 363 (1930) (recovery of taxes exacted in violation of the Constitution of the United States,

under compulsion, contravenes the Fourteenth Amendment); *McKesson v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990) (in the absence of predeprivation remedy, demands of federal due process requires meaningful postdeprivation remedy); *American Trucking Assns. v. Smith*, 496 U.S. 167, 181 (plurality opinion) (1990); (states must afford relief from invalid taxes consistent with due process principles.); *Harper v. Virginia Dept. of Taxation*, 509 U.S. _____,125 L.Ed.2d 74, 1135, Ct. 2510 (1993) (state law may not confine taxpayers to lesser remedy than demands of federal due process.).

This Court stated in *McKesson*, 496 U.S. 35, 36,

> Because exaction of a tax constitutes a deprivation of property, the state must provide procedural safeguards against unlawful exactions to satisfy the commands of the Due Process Clause (citations omitted).

Unlike *McKesson*, the validity of the taxes here is not an issue. *Edgewood III* determined the invalidity of the tax. It was a patently unconstitutional scheme. Petitioners in this proceeding seek a refund of taxes paid where there was no legislative power to levy the invalid taxing scheme. See *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 817 (taxes paid pursuant to invalid tax scheme entitled Petitioner to a refund).

This Court in *McKesson*, after a full review of Constitutional safeguards against unlawful exactions by a state under the Due Process Clause, said 496 U.S. 37:

> "Had the Florida courts declared the Liquor Tax invalid either *because* (other than its discriminatory nature) *it was beyond the State's power to impose*, as was the unapportioned tax in O'Connor, or because the taxpayers were absolutely immune from the tax, as were the Indian Tribes in Ward and Carpenter, *no corrective action by the State could cure the invalidity of the tax during the contested tax period*. The State would have had no choice but to "undo" the unlawful deprivation by refunding the tax previously paid under duress, because allowing the State to "collect these unlawful taxes by coercive means and not incur any obligation to pay them back ... would be in contravention of the Fourteenth Amendment." *Ward*, 253 U.S. at 24, 64 L.Ed. 751, 40 S.Ct. 419; *see also Carpenter*, 280 U.S. at 369, 74 L.Ed. 478, 50 S.Ct. 121 (emphasis supplied).

No property owner who has paid the invalid tax for 1991 and 1992, even under protest, has any right to any refund under *Edgewood III*, the penaltimate statement of Texas law, which prospectively deferred until 1993 any legal remedies against the CED tax. This is exactly what *McKesson* prohibits as a denial of federal due process. The Court of Appeals' assumption that Texas law provides an adequate remedy is clearly erroneous as a matter of fact and if left standing would viciate this Court's mandate in *McKesson*.

It is significant that the illegal tax involved here is a third attempt by the Texas Legislature to reach out and tax subjects beyond its Texas Constitutional authority. *Edgewood III*, 826 S.W.2d 489 (Tex. 1992); *Edgewood*

Independent School District v. Kirby, 804 S.W.2d 491 (Tex. 1991) (Edgewood II); *Edgewood Independent School District v. Kirby*, 777 S.W.2d 391 (Tex. 1989) (Edgewood I).

The decision in *Edgewood III*, to accord taxpayers solely prospective 1993 relief only after all of the 1991 and 1992 invalid, illegal ad valorem taxes were collected and paid, foreclosed any taxpayers opportunity under Texas state law for any refund of the taxes as the decision prohibited using the illegality of the Act as a "defense to the payment" of these taxes. *Edgewood III*, 826 S.W.2d at 522. This preclusion by Texas law of any refund procedure was in total derogation of any state statutory remedies. This deprived Texas taxpayers of all "plain", "speedy" and "efficient" remedies. In the absence of these remedies Petitioners have no predeprivation or postdeprivation relief from these invalid taxes. The absence of any meaningful predeprivation or post deprivation remedy for these takings of property through invalid taxes, exacted under duress, does not provide the procedural safeguards against illegal exactions as required by *McKesson*.

The statutory prohibitions of the Tax Injunction Act are only applicable to petitioners when such procedural safeguards exist. *Rosewell v. LaSalle Nat'l. Bank*, 450 U.S. 503 (1981).

This Court has held that even a partially adequate state law remedy is not enough to deprive the federal district court of jurisdiction under the Tax Injunction Act. *Georgia R. Co. v. Redwine*, 342 U.S. 299, 302-302 (1952) (state law remedy limited to 15% of invalid taxes paid). This Court's recent analysis of the procedural due process limitations on a state's retention of illegal, invalid, unconstitutional taxes certainly raises important questions regarding the

applicability of the Tax Injunction Act, in the absence of any predeprivation or postdeprivation remedies under state law.

The Court of Appeals' rejection of federal jurisdiction without any serious consideration of the lack of state remedies for these Petitioners will not withstand any scrutiny. This "rejection" bars any claim for any refund of unconstitutional state taxes as required by this Court's decisions and the commands of federal due process.

CONCLUSION

Plenary review by this Court is warranted to insure that any encroachment upon this Court's decision in *McKesson* and the procedural due process safeguards of the Fourteenth Amendment is not allowed. This Court should provide the guidance needed to insure that the state courts are not permitted to arbitrarily protect public treasuries from the commands of the Due Process Clause at the expense of taxpayers being unlawfully deprived of their property under state law.

Respectfully submitted,

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APPENDIX A

U.S. COURT OF APPEALS
F I L E D
JAN 05 1994
CHARLES R. FULBRUGE III
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1502
Conference Calendar

GRAYDON L. GIBSON ET AL.,
Plaintiffs-Appellants,

versus

DALLAS COUNTY EDUCATION DISTRICT,
and All Other County Education
Districts in the State of Texas,
Defendant-Appellee,

ATTORNEY GENERAL, State of Texas,
and TEXAS EDUCATION AGENCY,
Intervening Defendants-Appellees.

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Appeal from the United States District
Court for the Northern District of Texas
USDC No. 3:92-CV-2388-R

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Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM: *

The suit by Texas taxpayers Graydon L. and Oleta Gibson seeking a refund from state ad valorem taxes is barred by the Tax Injunction Act, 28 U.S.C. § 1341.

The Tax Injunction Act applies to suits for state tax refunds. *Bland v. McHann*, 463 F.2d 21, 27 (5th Cir. 1972), *cert. denied*, 410 U.S. 966 (1973). The Act prohibits the district court from exercising jurisdiction over state tax refund suits unless the state fails to supply a plain, speedy, and efficient remedy for the taxpayer's claim. *Smith v. Travis County Education District*, 968 F.2d 453, 455-56 (5th Cir. 1992); *United Gas Pipe Line Co. v. Whitman*, 595 F.2d 323, 330 (5th Cir. 1979).

"The inquiry into whether a plain, speedy and efficient remedy exists focuses on whether a state provides a procedural vehicle that affords taxpayers the opportunity to raise their federal constitutional claims." *Smith*, 968 F.2d at 456. A state provides a plain, speedy, and efficient remedy when it provides taxpayers with a full hearing and judicial determination with ultimate review available in the United States Supreme Court. *Rosewell v. LaSalle National Bank*, 450 U.S. 503, 514, 101 S.Ct. 1221, 67 L.Ed.2d 464 (1981).

Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

"The general rule is that the availability of a refund action satisfies section 1341's requirement that an adequate state remedy exists." *United Gas*, 595 F.2d at 331. If such is available, in actions for the refund of state taxes the federal courts must defer to the state administrative and judicial remedies, and the aggrieved party must pursue relief in state courts. *Id.* at 325.

The taxpayers have a "plain, speedy and efficient" remedy under the Tax Injunction Act because Texas courts would allow them to assert their federal due process claims. *See McQueen v. Bullock*, 907 F.2d 1544, 1547-48 and n. 9 (5th Cir. 1990), *cert. denied*, 499 U.S. 919 (1991). Texas "has a vast arsenal to assure orderly adjudication of [] serious federal constitutional [questions]" in state tax suits." *Id.* at 1550 (internal quotation and citation omitted).

As in *Smith*, "[t]he taxpayers have not demonstrated that the state courts have refused to entertain their federal claim in their pending state court actions. Nor do they show that their state remedy is uncertain or speculative." *Smith*, 968 F.2d at 456.

AFFIRMED.

ENTERED ON DOCKET
——— PURSUANT
TO F.R.C.P: RULES
58 AND 79a

U.S. DISTRICT COURT
NORTHERN DISTRICT
OF TEXAS
F I L E D
MAY 17 1993
NANCY DOHERTY, CLERK
BY———————
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GRAYDON L. GIBSON, OLETA GIBSON, and ALL OTHER TAXPAYERS IN TEXAS SIMILARLY SITUATED.	§	
Plaintiffs,	§	CA 3-92-
vs.	§	2388-R
DALLAS COUNTY EDUCATION DISTRICT, and ALL OTHER COUNTY EDUCATION DISTRICTS IN THE STATE OF TEXAS,	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Now before this Court are the motions to dismiss of Defendant Dallas County Education District and Intervenors Texas Education Agency and the Attorney General of Texas. Because the judgment in *Smith v. Travis County Education District*, 968 F.2d 453 (5th Cir. 1992), bars Plaintiffs from bringing their suit in federal district court, this Court GRANTS the motions to dismiss of Defendants and Intervenors.

In *Carrollton-Farmers Branch Independent School District v. Edgewood Independent School District*[1] ("*Edgewood III*"), the Supreme Court of Texas held that the public school finance system permitting county education districts ("CEDs") to levy ad valorem taxes violated the State Constitution.[2] However, the Supreme Court deferred the effect of its ruling to prevent any disruption in the collection of the 1991 and 1992 CED taxes and expressly stated that: "Our ruling is not to be used as a defense to the payment of any such taxes." [3]

In the case before this Court, two taxpayers who paid 1991 and 1992 ad valorem taxes to the Dallas CED claim that *Edgewood III* leaves them without any legal right or procedure to obtain a refund of their taxes. Plaintiffs claim that this lack of legal remedy violates the Due Process Clause of the Fourteenth Amendment. On February 2, 1993, this Court granted leave for the Attorney General of Texas and the Texas Education Agency to intervene in the action Defendants and Intervenors contend that Plaintiffs' claims are barred by the Eleventh Amendment, the Tax Injunction Act, and the doctrine of *res judicata*.

Analysis

In *Smith v. Travis County Education District*,[4] Texas taxpayers challenged the 1991 and 1992 collection of ad valorem taxes that *Edgewood III* had found in violation of the

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1. 826 S.W.2d 489 (Tex. 1992).

2. *Id.* at 524.

3. *Id.* at 522

4. 968 F.2d 453 (5th Cir. 1992).

State Constitution. The taxpayers claimed that the Supreme Court's ruling that plaintiffs could not use the unconstitutionality of the ad valorem taxes as a defense to paying or seeking a refund of the taxes violated their Fifth and Fourteenth Amendment due process rights. The Fifth Circuit held that the Tax Injunction Act barred the district court from exercising subject matter jurisdiction over the case and remanded the case to the district court with instructions to dismiss.[5]

This Court does not discern any difference between the claims of Plaintiffs in the instant case and the claims of the Smith plaintiffs. The district court defined the central issue in *Smith*:

> [W]hether the continued enforcement of a funding scheme that is concededly unconstitutional under the State's own constitution violates the Due Process clause of the Fifth and Fourteenth Amendments and 42 U.S.C. Section 1983, where the State's own highest court has declared that the State's taxpayers may not use that infirmity as a defense to either avoid paying or seeking refund of the taxes due under the scheme.[6]

---

5. *Id.* at 456. The Tax Injunction Act provides that:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

6. *Smith v. Travis County Education District*, 791 F. Supp. 1170, 1185 (W.D. Tex.), vacated, 968 F.2d 453 (5th Cir. 1992). The Fifth Circuit set out the *Smith* plaintiffs' claims on appeal from the district court:

In the instant case, Plaintiffs define their claims in a manner legally indistinguishable from *Smith*:

> (a) that Plaintiffs have no meaningful procedure or remedy under Texas law to recover monies illegally assessed and collected by the CEDs in violation of the due process clause of the Fourteenth Amendment; (b) that Plaintiffs are seeking recovery of those monies in this action on the basis that Texas law leaves them without any legal right or procedures by which they may recover the admittedly illegal, unlawful taxes; and (c) that Texas law says the CEDs have no obligation to repay this invalid tax which was beyond the power of the legislature to impose and that no corrective action can cure the invalidity of the CED tax for 1991 and 1992.[7]

Furthermore, the district court certified *Smith* as a class action. The court designated the plaintiffs as the class comprising 1991 and 1992 ad valorem taxpayers in Texas and certified the defendants as the class comprising the Texas

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> The taxpayers sought a declaratory judgment that the imposition and collection of the 1991 and 1992 CED taxes violated the due process clause of the Fourteenth Amendment to the U.S. Constitution. They also sought an injunction requiring that the State of Texas fashion an appropriate post-deprivation remedy to the unconstitutional collection of the 1991 CED taxes already paid, and an injunction prohibiting collection of the 1992 CED taxes.

Smith, 968 F.2d at 454-55.

7. Plaintiffs' Brief in Opposition to Intervenors' Motion to Dismiss at 5 (Feb 23, 1993).

CEDs [8] Plaintiffs in the instant case are two taxpayers who paid ad valorem taxes in 1991 and 1992 to Defendant Dallas CED.[9] This Court finds that Graydon L. Gibson and Oleta Gibson were members of the plaintiff class certified by the district court in *Smith*. This Court also finds that the Dallas CED was a member of the defendant class certified in *Smith*. Accordingly, this Court concludes that *Smith* resolved and extinguished the claims between Plaintiffs and Defendant in the instant case.

Conclusion

For the reasons stated, this Court GRANTS the motions to dismiss of Defendants and Intervenors and DISMISSES with prejudice Plaintiffs' claims.

SIGNED THIS 14 DAY OF May , 1993.

/s/ Jerry Buchmeyer
UNITED STATES DISTRICT JUDGE
JERRY BUCHMEYER

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8. *Smith* 91 F. Supp, at 1176, 1178-81.

9. Amended Class Action Complaint at 2 (Feb. 10, 1993).

U S DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
F I L E D
17 1993
NANCY DOHERTY, CLERK
BY _____
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GRAYDON L. GIBSON, ET AL.,	§	
Plaintiff,	§	
vs.	§	3:92-CV-
	§	2388-R
DALLAS COUNTY EDUCATION	§	
DISTRICT	§	
Defendant.	§	

ORDER

In accordance with this Court's Memorandum Opinion, granting defendants' and intervenors' Motion to Dismiss, this case is **DISMISSED**.

SIGNED THIS 17TH DAY OF MAY , 1993.

/s/ Jerry Buchmeyer
UNITED STATED DISTRICT JUDGE
JERRY BUCHMEYER

ENTERED ON DOCKET
——— PURSUANT
TO F.R.C.P. RULES
58 AND 79a